

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SUR TAX REFERENCE No 4 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF INCOME-TAX

Versus

SHRI DIGVIJAY WOOLLEN MILLS- LIMITED

Appearance:

MR MANISH R BHATT for Petitioner
MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 17/12/98

ORAL JUDGEMENT (per R. Balia, J.)

This reference arises out of the proceedings under The Companies (Profits) Surtax Act, 1964, for the A.Y. 1972-73. The assessee company was subjected to surtax for A.Y. 1972-73 by assessment order dated

15.7.1976. That order was sought to be rectified by order dated 9.6.77 on the ground that the original assessment order suffered from mistake apparent from the record. The apparent mistake to which the reference was made was that out of the reserve funds of the company as on 1.4.1971, no adjustment was made of the proposed dividend for the previous year 1970-71 which ought to have been made in view of the provisions of sub-clause (iii) of clause 1 of the Second Schedule which has resulted in excess computation of capital. On appeal, the tribunal found that, as per the showing of the Commissioner himself, the question whether proposed dividend is to be adjusted against reserve is debatable one and, therefore, as on the date when rectification order was made, condition for exercising jurisdiction u/s 13 did not exist though, by a later decision of the Supreme Court in Vazir Sultan Tobacco Co. Ltd. v. Commissioner of Income-tax, A.P., 132 ITR 559, the stand now taken by the revenue was found to be correct.

2. At the outset, on the commencement of hearing of this case, the learned counsel for the respondent has candidly pointed out that in another case, Surtax Reference No. 5/81 decided on 10.9.1998 to which one of us was a party (A.R. Dave, J.), it has held that independent of any decisions, non-adjustment of proposed dividends against the reserves amounted to a mistake apparent on the face from the record liable to be rectified u/s 13.

3. In view thereof, following the said decision, we answer the question referred to us in negative, that is to say, in favour of the revenue and against the assessee. There shall be no order as to costs.

(hn)